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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PAYROLL SOLUTIONS GROUP,
LIMITED INC., et al.,

Plaintiffs,

v.

THE STATE OF NEVADA, et al.,

Defendants.

2:02-CV-00927 JCM (RJJ)

Date: N/A

Time: N/A

ORDER

Presently before the court is defendants The State of Nevada, Department of Business and Industry, Division of Insurance, and Alice Ann Molasky-Arman, Nevada Commissioner of Insurance's motion for summary judgment. (Doc. #85). Plaintiffs Payroll Solutions Group Limited Inc. et al filed a notice of non-opposition. (Doc. #90).

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact which would preclude summary judgment as a matter of law. Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to present, by affidavits, depositions, answers to interrogatories, or admissions on file, "specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); Fed. R. Civ. P. 56(c).

Plaintiffs' amended complaint alleges causes of action for (1) declaratory relief, (2) injunctive relief, (3) violation of state sovereignty, (4) violation of substantive due process, (5) violation of civil

1 rights secured by the Nevada constitution, (6) abuse of process, (7) tortious interference with existing
2 business expectancy, (8) tortious interference with existing contractual relations, (9) tortious
3 interference with prospective economic advantage, and (10) trade defamation.

4 Defendants assert in their motion for summary judgment (doc. # 85) that they are entitled to
5 summary judgment on all claims against all defendants. Defendants rely on the court's ruling on the
6 previous motion for summary judgment (doc. #66), and assert that it "necessarily disposes of all the
7 causes of action within [p]laintiffs' complaint." On August 6, 2010, in the hearing on the motion,
8 the court held that, based on well-established law, a statute such as NRS 616B.691(2) cannot
9 determine whether an ERISA benefit plan is a MEWA or a single employer plan under ERISA.
10 Further, the court held that NRS 616B.691(2) is preempted, and granted partial summary judgment
11 in favor of the defendants.

12 Defendants now assert that "with the resolution of the dispositive legal issue, all claims for
13 relief asserted by the plaintiff[s] necessarily fail[,] as they were all based on plaintiffs' erroneous
14 interpretation of law which allowed them to consider themselves exempt from any state insurance
15 regulation or oversight."

16 The plaintiffs represent to the court that they do not intend to file an opposition to the motion
17 for summary judgment. (Doc. #90). Thus, the court can conclude that they concede with the
18 allegations of defendants, that the claims in their second amended complaint "necessarily disintegrate
19 for failure of foundation on essential elements of the plaintiffs' case."

20 As the plaintiffs failed to present the court with "specific facts showing that there is a genuine
21 issue for trial," this court is inclined to grant the defendants' motion for summary judgment (doc.
22 #85). With regards to the first cause of action, declaratory relief, the court holds that as the employee
23 benefit plan offered by the plaintiffs is a MEWA pursuant to ERISA, it is subject to the laws and
24 regulations of the state of Nevada, specifically, the Nevada Insurance Code.

25 Accordingly,


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1 IT IS HEREBY ORDERED ADJUDGED AND DECREED that defendants The State of
2 Nevada, Department of Business and Industry, Division of Insurance, and Alice Ann Molasky-
3 Arman, Nevada Commissioner of Insurance's motion for summary judgment (doc. #85) be, and the
4 same hereby is, GRANTED as to all claims against all defendants.

5 DATED this 2nd day of December, 2010.

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8 UNITED STATES DISTRICT JUDGE
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